

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5162 of 1982

with

SPECIAL CIVIL APPLICATION No 5163 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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BOTAD NAGARPALIKA

Versus

MADHUBEN BHAGWANBHAI

Appearance:

MR BB NAIK for Petitioner

MR SK JHAVERI for Respondent No. 3, 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner herein, Botad Nagarpalika, filed this Special Civil Application challenging the award of the Labour

Court, Rajkot, made in Reference (LCR) No.20/79, regarding reinstatement of respondent No.3 and respondent No.5. The Labour Court, by the impugned award, held the termination of services of respondents No.3 and 5 to be illegal as being made in violation of Sec.25F of the Industrial Disputes Act, 1947. The petitioner, though filed a written statement, but did not produce any oral evidence. Though in the written statement, objections have been taken that the services of respondents No.3 and 5 had been terminated after giving them notice and retrenchment compensation, no evidence has been produced. The termination of the services of these two workmen had also been held to be in contravention of provisions of Sec.25H of the Industrial Disputes Act, 1947. In the Special Civil Application No.5162 of 82, Rule was issued by this Court and interim relief has been granted in the following terms.

- "(1) In the case of respondent No.3, she will be paid the full back wages payable to her from the date of termination till the date on which she is stated to have reached superannuation. The amount of back wages payable by virtue of this order will be determined after taking into account the sum, if any, paid to her towards wages due and payable for the aforesaid period.
- (2) In the case of respondent No.5, her reinstatement will continue to be operative during the pendency of this petition. In addition, she will be paid the amount due and payable to her under the award dated April 22, 1981, made by the Presiding Officer, Labour Court, Rajkot in reference (LCR) No.307 of 1978.
- (3) The amounts becoming due and payable hereunder will be paid within a period of four weeks from today."

The counsel for respondent No.3 contended that the order of this Court dated 27th July, 1983, has not been complied and as such, the workmen have taken out proceedings for computation of the amount of back wages and for recovery of amount mentioned in the application u/s.33C(i) of the Industrial Disputes Act, 1947. The Labour Court, vide its order dated 2.9.82, issued a recovery certificate in favour of workmen for the amount mentioned therein and that certificate has been challenged by the petitioner by filing this Special Civil Application No.5163 of 1982.

2. Having heard the learned counsel for the petitioner, I do not find any illegality in the award made by the Labour Court. It is a case where service of the respondents No.3 and 5 has been terminated in violation of provisions of Sec.25F of the Industrial Disputes Act, 1947. In my view, there is no error apparent on the face of the award which calls for interference of this Court. The learned counsel for the petitioner contended that the respondent No.3 has already attained the age of superannuation when the interim order was passed and has stated that the said award may not be taken to continue her in service even after reaching of age of superannuation. This apprehension of learned counsel for the petitioner is wholly untenable. Reinstatement and continuation thereafter is only till the date on which the respondent is stated to have reached superannuation. This position has been made clear by this Court by passing order of interim relief on 27th July, 1983. It has next been contended that the respondent No. 5 has been paid some amount in pursuance of the award passed earlier. It is made clear that whatever amount has been paid to the respondents No.3 and 5, shall be deductible from the amounts payable to them in pursuance of the award made in Ref. (LCR) No.20/79. In the result, the Special Civil Application No.5162 of 1982 is dismissed and Rule is discharged.

3. So far as Special Civil Application No.5163 of 1982 is concerned, there is a disputed question of fact whether the payment of back wages as ordered by this Court by way of interim relief, has been paid or not and when the matter is pending before the appropriate authority to which the certificate of recovery was issued by the Labour Court, it is proper that the petitioner will be satisfied the said authority that the payment has been made. Even otherwise, in view of the dismissal of Special Civil Application No.5162 of 1982, the petitioner has to make the payment of the arrears of amounts which follows from the award of Labour Court in Ref. (LCR) No.20/79 and determination of the same and other incidental question regarding the amount paid or not is to be considered by the appropriate authority the authority to which certificate has been issued by the Labour Court. In the result, this Special Civil Application No.5163 of 1982 is also dismissed. Rule is discharged. Interim relief granted by this Court is vacated.

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(sunil)